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Attorneys for Plaintiff Ameranth, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AMERANTH, INC.,

Plaintiff,

v.

GRUBHUB, INC.,

Defendant.

Case No. 12-cv-00739-DMS-WVG

**PLAINTIFF AMERANTH, INC.'S
FIRST AMENDED ANSWER TO
COUNTERCLAIMS OF
DEFENDANT GRUBHUB, INC.**

DEMAND FOR JURY TRIAL

**AMERANTH, INC.'S FIRST AMENDED ANSWER TO
COUNTERCLAIMS OF DEFENDANT GRUBHUB, INC.
12-CV-00739-DMS-WVG**

1 Plaintiff Ameranth, Inc. (“Ameranth”) responds to the Counterclaims of
2 Defendant GrubHub, Inc. (“GrubHub” or “Defendant”) as follows:

3 172. Admitted.

4 173. Admitted.

5 174. Admitted.

6 175. Admitted.

7 176. Admitted.

8 177. Admitted.

9 178. Admitted.

10 179. Admitted.

11 180. Admitted.

12 181. Ameranth admits that it has filed various patent infringement
13 lawsuits against infringing parties, which suits are of public record. Except as
14 admitted, denied.

15 182. The Menusoft proceedings are a matter of public record, and the
16 Menusoft invalidity judgment has been vacated and is no further force or effect.
17 Except as admitted, denied.

18 183. Ameranth incorporates its prior responses herein.

19 184. Denied.

20 185. The claims of the ‘077 patent speak for themselves, and no further
21 response is required. Ameranth admits that the paragraph correctly quotes the
22 preamble to the claims; except as admitted, denied.

23 186. Denied.

24 187. The claims of the ‘077 patent speak for themselves. Ameranth
25 admits that element e of claim 1 contains the quoted language for that claim and
26 claims 2-8 dependent thereon; except as admitted, denied.

27 188. Denied.

1 189. The claims of the '077 patent speak for themselves. Ameranth
2 admits that element e of claim 9 contains the quoted language for that claim and
3 claims 10-12 dependent thereon; except as admitted, denied.

4 190. Denied.

5 191. The claims of the '077 patent speak for themselves. Ameranth
6 admits that elements of claims 1 and 9 contain the quoted language for that claim
7 and the claims dependent thereon; except as admitted, denied.

8 192. Denied.

9 193. The claims of the '077 patent speak for themselves. Ameranth
10 admits that element e of claim 1 contains the quoted language for that claim and
11 claims 2-8 dependent thereon; except as admitted, denied.

12 194. Denied.

13 195. The claims of the '077 patent speak for themselves. Ameranth
14 admits that element e of claim 9 contains the quoted language for that claim and
15 claims 10-12 dependent thereon; except as admitted, denied.

16 196. Denied.

17 197. The claims of the '077 patent speak for themselves. Ameranth
18 admits that element e of claim 1 contains the quoted language for that claim and
19 claims 2-8 dependent thereon; except as admitted, denied.

20 198. Denied.

21 199. The claims of the '077 patent speak for themselves. Ameranth
22 admits that element e of claim 1 contains the quoted language for that claim and
23 claims 2-8 dependent thereon; except as admitted, denied.

24 200. Denied.

25 201. The claims of the '077 patent speak for themselves. Ameranth
26 admits that element e of claim 1 contains the quoted language for that claim and
27 claims 2-8 dependent thereon; except as admitted, denied.

1 202. Denied.

2 203. The claims of the '077 patent speak for themselves. Ameranth
3 admits that the preamble to the claims contains the quoted language; except as
4 admitted, denied.

5 204. Denied.

6 205. The claims of the '077 patent speak for themselves. Ameranth
7 admits that element e of claim 13 contains the quoted language for that claim and
8 claim 14-18 dependent thereon; except as admitted, denied.

9 206. Denied.

10 207. The claims of the '077 patent speak for themselves. Ameranth
11 admits that element e of claim 13 contains the quoted language for that claim and
12 claim 14-18 dependent thereon; except as admitted, denied.

13 208. Denied.

14 209. The claims of the '077 patent speak for themselves. Ameranth
15 admits that element e of claim 13 contains the quoted language for that claim and
16 claim 14-18 dependent thereon; except as admitted, denied.

17 210. Denied.

18 211. The claims of the '077 patent speak for themselves. Ameranth
19 admits that element e of claim 13 contains the quoted language for that claim and
20 claim 14-18 dependent thereon; except as admitted, denied.

21 212. Denied.

22 213. The claims of the '077 patent speak for themselves. Ameranth
23 admits that element e of claim 13 contains the quoted language for that claim and
24 claim 14-18 dependent thereon' except as admitted, denied.

25 214. Denied.

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1 215. The claims of the '077 patent speak for themselves. Ameranth
2 admits that element e of claim 13 contains the quoted language for that claim and
3 claim 14-18 dependent thereon; except as admitted, denied.

4 216. Denied.

5 217. Denied.

6 218. Denied.

7 219. Ameranth incorporates its prior responses herein.

8 220. Denied.

9 221. Ameranth admits that Exhibit A appears to be a copy of Camaisa.
10 Ameranth denies all other allegations contained in this paragraph.

11 222. Ameranth admits that Exhibit b appears to be a copy of Rose.
12 Ameranth denies all other allegations contained in this paragraph.

13 223. Ameranth denies that it has filed or threatened to file an action for
14 infringement of the '077 patent against either Allmenus.com or Campusfood.com.

15 224. Ameranth lacks sufficient information or belief to meaningfully
16 respond to this allegation, and on that basis denies it.

17 225. Ameranth lacks sufficient information or belief to meaningfully
18 respond to this allegation, and on that basis denies it.

19 226. Denied.

20 227. Denied.

21 228. Ameranth incorporates its prior responses herein.

22 229. Denied.

23 230. Ameranth admits that Exhibit D refers to the Transpad; except as
24 admitted, denied.

25 231. Denied.

26 232. Denied.

27 233. Ameranth incorporates its prior responses herein.
28

1 234. Denied.

2 235. The claims of the '077 patent speak for themselves. Ameranth
3 admits that the term "real-time" appears in the specification as alleged in the
4 paragraph; except as admitted, denied.

5 236. Denied.

6 237. The claims of the '077 patent speak for themselves. Ameranth
7 admits that the preamble to the claims contains the quoted language; except as
8 admitted, denied.

9 238. Denied.

10 239. Denied.

11 240. The claims of the '077 patent speak for themselves. Ameranth
12 admits that element e of claim 1 contains the quoted language for that claim and
13 claims 2-8 dependent thereon; except as admitted, denied.

14 241. Denied.

15 242. Denied.

16 243. The claims of the '077 patent speak for themselves. Ameranth
17 admits that element e of claim 9 contains the quoted language for that claim and
18 claims 10-12 dependent thereon; except as admitted, denied.

19 244. Denied.

20 245. Denied.

21 246. The claims of the '077 patent speak for themselves. Ameranth
22 admits that the preamble to the claims contains the quoted language; except as
23 admitted, denied.

24 247. Denied.

25 248. Denied.

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1 249. The claims of the '077 patent speak for themselves. Ameranth
2 admits that element e of claim 13 contains the quoted language for that claim and
3 claim 14-18 dependent thereon; except as admitted, denied.

4 250. Denied.

5 251. Denied.

6 252. The claims of the '077 patent speak for themselves. Ameranth
7 admits that the quote language is contained in the preamble; except as admitted,
8 denied.

9 253. Denied.

10 254. Ameranth incorporates its prior responses herein.

11 255. Denied.

12 256. Ameranth admits that Keith McNally, on behalf of Ameranth,
13 executed the power of attorney appointing Michael Fabiano as prosecution
14 counsel for the '077 patent application. Except as admitted, denied.

15 257. The USPTO file speaks for itself. Ameranth admits that Keith
16 McNally was involved in the prosecution of the '077 patent. Except as admitted,
17 denied.

18 258. Admitted.

19 259. Ameranth incorporates its response to paragraph 256, above.

20 Ameranth further admits that Michael Fabiano is one of Ameranth's counsel of
21 record in this litigation. Except as admitted, denied.

22 260. Ameranth admits that the notice of allowance and the '077 patent
23 issued as reflected in the USPTO files, and that Ameranth paid the issue fee as
24 reflected therein. Ameranth further admits that Examiner Brophy primarily
25 handled the examination. Except as admitted, denied.

26 261. The USPTO file speaks for itself. Except as admitted, denied.

27 262. Admitted.

1 263. The USPTO file speaks for itself. Ameranth admits that Exhibit E
2 appears to be a copy of the Office Action, and that Exhibit J appears to be a copy
3 of Sirola. Except as admitted, denied.

4 264. The USPTO file speaks for itself. Except as admitted, denied.

5 265. Ameranth admits that Keith McNally became aware of the USPTO
6 office action. Except as admitted, denied.

7 266. Ameranth admits that Michael Fabiano was appointed as Ameranth's
8 prosecution counsel for the '633 Application. The USPTO file speaks for itself.
9 Ameranth admits that Exhibit F appears to be a copy of the July 2, 2010 response.
10 Except as admitted, denied.

11 267. The USPTO file speaks for itself. Ameranth admits that Exhibit G
12 appears to be a copy of the office action. Except as admitted, denied.

13 268. The USPTO file speaks for itself. Except as admitted, denied.

14 269. The USPTO file speaks for itself. Ameranth admits that Michael
15 Fabiano participated in a telephonic interview with Examiner Wu as reflected
16 therein. Except as admitted, denied.

17 270. The USPTO file speaks for itself. Except as admitted, denied.

18 271. The USPTO file speaks for itself. Ameranth admits that Exhibit K
19 appears to be a copy of Hall, and that Exhibit H appears to be a copy of the
20 February 15, 2011 office action. Except as admitted, denied.

21 272. The USPTO file speaks for itself. Ameranth admits that Exhibit I
22 appears to be a copy of the June 6, 2011 answer. Except as admitted, denied.

23 273. The Hall patent speaks for itself. Except as admitted, denied.

24 274. The Notice of Allowance speaks for itself. Except as admitted,
25 denied.

26 275. Denied.

27 276. Denied.

1 277. The USPTO file speaks for itself. Except as admitted, denied.

2 278. The claims of the patents speak for themselves. Except as admitted,
3 denied.

4 279. The claims of the patents speak for themselves. Except as admitted,
5 denied.

6 280. The claims of the patents speak for themselves. Except as admitted,
7 denied.

8 281. The claims of the patents speak for themselves. Except as admitted,
9 denied.

10 282. The claims of the patents speak for themselves. Except as admitted,
11 denied.

12 283. The claims of the patents speak for themselves. Except as admitted,
13 denied.

14 284. The claims of the patents speak for themselves. Except as admitted,
15 denied.

16 285. The claims of the patents speak for themselves. Except as admitted,
17 denied.

18 286. The claims of the patents speak for themselves. Except as admitted,
19 denied.

20 287. The claims of the patents speak for themselves. Except as admitted,
21 denied.

22 288. The claims of the patents speak for themselves. Except as admitted,
23 denied.

24 289. The claims of the patents speak for themselves. Except as admitted,
25 denied.

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1 290. Ameranth admits that Keith McNally became aware of Rose and
2 Sirola during the prosecution of the '633 application prior to July 2, 2010. Except
3 as admitted, denied.

4 291. Ameranth admits that Michael Fabiano became aware of Rose and
5 Sirola during the prosecution of the '633 application prior to July 2, 2010. Except
6 as admitted, denied.

7 292. The calendar dates and the USPTO files speak for themselves.
8 Except as admitted, denied.

9 293. Ameranth admits that Michael Fabiano became aware of Hall prior to
10 March 30, 2011. Ameranth does not understand which "Final Office Action"
11 Defendant is referring to, and on that basis denies all such allegations on the
12 grounds of insufficient information and belief. Except as admitted, denied.

13 294. Ameranth admits that Keith McNally became aware of Hall prior to
14 March 30, 2011. Ameranth does not understand which "Final Office Action"
15 Defendant is referring to, and on that basis denies all such allegations on the
16 grounds of insufficient information and belief. Except as admitted, denied.

17 295. Admitted.

18 296. Ameranth admits that Keith McNally became aware of the Answer
19 by August 4, 2011. Except as admitted, denied.

20 297. The claims of the patents and the patent application speak for
21 themselves. Ameranth admits that the quoted language is contained in the
22 preamble; except as admitted, denied.

23 298. The claims of the patents and the patent application speak for
24 themselves. Ameranth admits that the quoted language is contained in the
25 documents; except as admitted, denied.

1 299. The claims of the patents and the patent application speak for
2 themselves. Ameranth admits that the quoted language is contained in the
3 documents; except as admitted, denied.

4 300. The claims of the patents and the patent application speak for
5 themselves. Ameranth admits that the quoted language is contained in the
6 documents. Except as admitted, denied.

7 301. The claims of the patents and the patent application speak for
8 themselves. Ameranth admits that the quoted language is contained in the
9 documents. Except as admitted, denied.

10 302. The claims of the patents and the patent application speak for
11 themselves. Ameranth admits that the quoted language is contained in the
12 documents. Except as admitted, denied.

13 303. The claims of the patents and the patent application speak for
14 themselves. Ameranth admits that the quoted language is contained in the
15 documents. Except as admitted, denied.

16 304. The claims of the patents speak for themselves. Except as admitted,
17 denied.

18 305. Denied. Furthermore, Ameranth in fact disclosed the defendants'
19 alleged "prior art" references to the USPTO in an IDS, and the Examiner for the
20 '077 patent checked off the submission and issued the '077 patent over those
21 references and many others.

22 306. Denied.

23 307. Denied.

24 308. Denied.

25 309. Denied.

26 310. Denied.

27 311. The USPTO file speaks for itself. Except as admitted, denied.
28

DEMAND FOR JURY TRIAL

Ameranth requests a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Ameranth prays for relief as follows:

1. That GrubHub take nothing by way of its claims;
2. For a judgment declaring that this is an exceptional case, and
awarding Ameranth its reasonable attorneys' fees against GrubHub;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: October 25, 2013

CALDARELLI HEJMANOWSKI & PAGE LLP

By: /s/ William J. Caldarelli

William J. Caldarelli
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